IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1885 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA ASSURANCE CO. LTD. - Appellant(s)
Versus
RAMESHCHANDRA RAVJIBHAI PATEL & 3 - Defendant(s)

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Appearance :
MS MEGHA JANI for Appellant(s) : 1,
MR YATIN SONI for Defendant(s) : 1 - 2.
RULE UNSERVED for Defendant(s) : 3,
RULE SERVED for Defendant(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 13/11/2006
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

In this appeal under Section 173 of the Motor Vehicles Act, 1988 the appellant has challenged the judgment and award dated 22.11.2000 of the Motor Accident Claims Tribunal (Main), Vadodara in MAC Petition No.1257 of 1990 awarding compensation of Rs.1,20,000/- to the claimants.

2. The appellant-New India Assurance Co. Ltd. had insured the truck involved in the accident which took place on 26.5.1990 between a scooter on which the deceased was travelling as a pillion-rider and the truck insured by the appellant-Insurance Company.

3. The Tribunal held that the accident was caused by the composite negligence of the truck driver to the extent of 80% and scooter driver to the extent of 20%.

On the quantum of compensation, the Tribunal made an award for Rs.1,20,000/- and directed that the claimants shall be entitled to recover the said amount with proportionate costs and interest at the rate of 12% per annum from the date of the claim petition till realization “from the opponents jointly and severally”.

4. The present appeal is filed by the Insurance Company of the truck on the ground that having determined the quantum of compensation and held the scooter driver to be responsible to the extent of

20%, the Tribunal ought not to have passed the award requiring the present appellant to pay the entire amount. The learned counsel for the appellant, therefore, submits that the appellant would be satisfied if the amount required to be paid by the appellant-Insurance Company is reduced from Rs.1,20,000/- to Rs.96,000/- after deducting the 20% amount payable by the driver, owner and Insurance Company of the scooter involved in the accident.

5. Having heard Ms Megha Jani, learned counsel for the appellant-Insurance Company for the truck and Mr Yatin Soni, learned counsel for the original claimants, we are of the view that when the Tribunal has given a finding of composite negligence against the driver of the truck as well as the scooter driver, the claimants are entitled to recover the amount from both or any of the tort-feasors as their liability would be joint and several. In this view of the matter, the Tribunal cannot be said to have committed any error of law.

6. It, however, goes without saying that once the appellant-Insurance Company deposits the entire amount of compensation with costs and interest, in view of the finding already given by the Tribunal that the scooter driver was negligent to the extent of 20%, without filing any substantive proceedings, it will be open to the Insurance Company to recover 20% amount from the driver, owner and Insurance Company of the scooter involved in the accident.

7. Subject to the above clarification, the appeal is dismissed.

(M.S. SHAH, J.)

(AKIL KURESHI, J.)

zgs/-